

No. 15521

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United States  
Court of Appeals  
For the Ninth Circuit

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ANTHONY SCRIVANICH,

Appellant,

vs.

UNITED STATES IMMIGRATION AND NAT-  
URALIZATION SERVICE and JOHN P.  
BOYD, District Director,

Appellee.

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Transcript of Record

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Appeal from the United States District Court for the  
Western District of Washington,  
Northern Division.

FILED

JUN 11 1957

PAUL P. O'BRIEN, CLERK



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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In the United States District Court, Western  
District of Washington, Northern Division

No. 4270

In the Matter of:

The Application of ANTHONY SCRIVANICH,

vs.

UNITED STATES IMMIGRATION AND NAT-  
URALIZATION SERVICE and JOHN P.  
BOYD, District Director.

PETITION FOR WRIT OF  
HABEAS CORPUS

Comes now Anthony Scrivanich, the above-named  
petitioner, and respectfully shows to this court as  
follows:

I.

That he is a resident of Seattle, King County,  
Washington, having resided in Seattle for nearly  
five years last past. That he has heretofore been  
ordered to be deported from the United States by  
the United States Immigration and Naturalization  
Service and that he is at liberty on his own recog-  
nizance.

II.

That the petitioner is a citizen of Yugoslavia,  
having been born in Sansego, now Yugoslavia, on  
August 3, 1929. That his parents are not Italian  
but are of Slavic origin and that both he and they  
speak the Croatian language.

## III.

That prior hereto a hearing was had in Seattle, Washington, pertaining to petitioner's residence in the United States. That although the place of the petitioner's birth was under Italian domination at the time of his said birth, said place is now territory belonging to Yugoslavia. That petitioner is a refugee from Yugoslavia who is unable to return thereto because of his fear of persecution, based on his opposition to the Communistic form of government. That petitioner based his right to remain in the United States on Congressional enactments authorizing certain refugees to remain in the United States. That the presiding inspector determined that the petitioner was of Italian nationality and was therefore subject to deportation to that country as being an unlawful immigrant therefrom.

## IV.

That by reason of the action of the Immigration and Naturalization Service petitioner has been deprived of his right to qualify as a refugee from a country in which he might be persecuted because of his political and religious beliefs and is being forcefully compelled to enter a country which he does not recognize as his own.

## V.

That after the order of deportation and prior hereto, a special bill was introduced in Congress which would authorize the legal admission of petitioner into the United States. Your petitioner has

been informed that said bill was passed by the Senate of the United States but that the same was not reported out of the House Judiciary Committee. That by reason of the foregoing, the Immigration and Naturalization Service has ordered petitioner to report at its headquarters in Seattle, Washington, at 1:00 o'clock p.m., on November 21 for immediate deportation to Italy.

VI.

That the decision of the Immigration and Naturalization Service is contrary to the Constitution and the laws of the United States of America and that petitioner's restraint and arrest are illegal.

Wherefore, petitioner prays this Honorable Court to issue an order to show cause directed to the respondents, directing them to show cause, if any they have, why a Writ of Habeas Corpus should not issue for the release of the petitioner from any further restraint and as to why the arrest of the petitioner for his deportation should not be declared void.

Petitioner further prays for a temporary restraining order directed against the respondents, restraining them from executing the order of deportation until further order of this court.

/s/ ANTHONY AGUSTINO  
SCRIVANICH,  
Petitioner.

Duly verified.

[Endorsed]: Filed November 21, 1956.

[Title of District Court and Cause.]

### ORDER TO SHOW CAUSE

This matter coming on regularly before the above-entitled court on a Petition for a Writ of Habeas Corpus, the petition of Anthony Scrivanich having been filed herein, alleging that the arrest of the petitioner by the respondents and an order of deportation issued for the petitioner's deportation to Italy, was and is illegal and void;

Now, Therefore, It Is Hereby Ordered that the respondents, United States Immigration and Naturalization Service, and John P. Boyd, District Director, be and they are hereby ordered to show cause in the above-entitled court on the 3rd day of December, 1956, at the hour of 10 o'clock, as to why the Petition for a Writ of Habeas Corpus should not be granted;

Done in Open Court this 21st day of November, 1956.

/s/ JOHN C. BOWEN,  
U. S. District Judge.

Presented by:

/s/ A. M. URSICH,  
Attorney for Petitioner.

[Endorsed]: Filed November 21, 1956.

[Title of District Court and Cause.]

RETURN TO PETITION FOR WRIT  
OF HABEAS CORPUS

The respondent makes the following Return to the Petition for Writ of Habeas Corpus herein:

I.

That the petitioner is an alien, approximately 26 years of age, who last entered the United States at the Port of New York on October 23, 1951, as a seaman on the "SS Argentina," a vessel of Panamanian registry. At said time he was admitted under Section 3 (5) of the Act of May 26, 1924 (8 USCA 203 (5) ). On November 21, 1952, the District Director, Immigration and Naturalization Service, issued a warrant for petitioner's arrest, alleging therein that he was, at the time of his entry, an immigrant not in possession of a valid immigration visa as required under the provisions of the Act of May 26, 1924, and not exempt therefrom and that he was therefore subject to deportation pursuant to law. Said warrant of arrest was served on petitioner at Seattle on November 21, 1952, the date of issuance.

II.

That a deportation hearing was accorded the petitioner on December 12, 1952, at Seattle, at which time he was represented by counsel. At said hearing the testimony of petitioner was taken in the



Slavic language through his interpreter. During the course of said hearing the petitioner admitted that he is an alien, that he had last entered the United States on October 23, 1951, as a member of the crew of the "SS Argentina," that he had deserted the ship at the Port of New York, that at the time of said entry into the United States he had intended to remain in the country permanently, and that at the time of said entry he was not in possession of a valid immigration visa for the purpose of entering the United States for permanent residence. Petitioner specified in said hearing that in said hearing that in the event he should be found subject to deportation and ordered deported that he be deported to Canada. He also requested the privilege of voluntary departure should he be found ineligible to remain in the United States.

### III.

On December 16, 1952, the hearing officer ordered that the petitioner be deported under Sections 13 and 14 of the Act of May 26, 1924 (8 USCA 213, 214), pursuant to law on the charge stated in the warrant of arrest. Petitioner appealed from the decision of the hearing officer to the Board of Immigration Appeals, and on May 4, 1952, the Board ordered the said appeal dismissed upon consideration of the entire record. On May 26, 1953, the District Director issued a warrant for the deportation of the petitioner. A copy of the record of deportation proceedings is attached hereto in certified form, incorporated herein, and marked Exhibit A.

IV.

On June 10, 1953, Senator Jackson introduced a private bill in petitioner's behalf in the Senate of the United States providing for relief from deportation. Petitioner received a stay of deportation during the pendency of said legislation. The Bill did not receive favorable action in the Senate Judiciary Committee and was not reported out of said committee or become enacted into law.

V.

That on November 25, 1954, petitioner was flown to New York by the Immigration and Naturalization Service for deportation to Italy pursuant to the warrant of deportation issued May 26, 1953, by the respondent herein. While in New York awaiting deportation, petitioner filed a petition for writ of habeas corpus, which petition was subsequently abandoned; on January 4, 1955, petitioner filed an application for relief from deportation under Section 6 of the Refugee Relief Act of 1953; said application set forth petitioner's assertion of Yugoslav nationality and his fear of persecution by reason of racial, religious and political convictions.

VI.

That a hearing on petitioner's application for relief under the Refugee Relief Act of 1953 was accorded petitioner in New York on January 4, 1955, at which time petitioner was represented by counsel. On January 5, 1955, the special inquiry officer recommended that said application be denied for the reason that petitioner's last entry into the

United States was unlawful. Said recommendation was approved upon consideration of the entire record by the Acting Regional Commissioner of the Immigration and Naturalization Service on February 17, 1955. Copies of petitioner's application for relief under the Refugee Relief Act of 1953 and the record of administrative proceedings are attached hereto in certified form, marked as Exhibit B, and incorporated herein.

## VII.

That on January 7, 1955, petitioner filed a motion before the Board of Immigration Appeals requesting reopening of the deportation proceedings and reconsideration of the order entered by the hearing officer on December 16, 1952. Said motion was denied on June 8, 1955.

## VIII.

That thereafter a private bill was introduced in the Senate of the United States in behalf of the petitioner which provided for relief from deportation. Said Bill (S. 551) was passed by the Senate on January 16, 1956, but was not thereafter enacted into law. During the pendency of said proposed legislation, petitioner was granted a stay in deportation, and upon failure of the bill's enactment into law, petitioner was granted a further stay in deportation until November 1, 1956, to permit him to attempt to emigrate to Canada. Petitioner failed to depart from the United States by said date, and on November 2, 1956, he was ordered to report to



the District Office of the Immigration and Naturalization Service at Seattle on November 21, 1956, for deportation to Italy pursuant to the warrant of deportation issued May 26, 1953.

IX.

That the subject deportation proceedings and subsequent administrative proceedings upon petitioner's application for relief under the provisions of the Refugee Relief Act of 1953 were not arbitrary, unfair or unreasonable; that said proceedings have been reasonable, fair and lawful, and the order of deportation and the denial of relief upon petitioner's application under the Refugee Relief Act are supported by the record as a whole.

X.

Respondent denies all the allegations set forth in paragraph II of the petition; denies all the allegations set forth in paragraph III of the petition, but admits that petitioner was accorded a hearing in Seattle, Washington, pertaining to petitioner's residence in the United States; denies all the allegations set forth in paragraph IV of the petition; and denies all the allegations set forth in paragraph VI of the petition.

Wherefore, it is prayed that the petition for a writ of habeas corpus be dismissed and the rule to show cause discharged.

/s/ CHARLES P. MORIARTY,  
United States Attorney;

/s/ RICHARD F. BROZ,  
Assistant United States  
Attorney.

/s/ JOHN P. BOYD,  
District Director.

Duly verified.

Affidavit of Service by Mail attached.

[Endorsed]: Filed November 30, 1956.

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[Title of District Court and Cause.]

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Matter came on for hearing before the above-entitled Court on February 12, 1957, upon the application of petitioner, Anthony Scrivanich, for a writ of habeas corpus and order to show cause. Petitioner was represented by his attorneys, Anthony M. Ursich and Richard Jensen; respondent was represented by Richard F. Broz, Assistant United States Attorney. Respondent filed a return to the petition for writ of habeas corpus, to which return were attached the records of deportation proceedings relating to petitioner, marked Exhibits A and B. The records of deportation proceedings were admitted into evidence upon stipulation of the parties, with the exception of Respondent's Exhibit A-1, which was admitted into evidence over petitioner's objection; memorandums of authorities

were filed, and oral argument was had. The Court, being fully advised, pronounced its oral decision February 12, 1957. Whereupon, the Court makes the following Findings of Fact and Conclusions of Law.

### Findings of Fact

#### I.

That the petitioner is an alien, approximately 26 years of age, who last entered the United States at the Port of New York on October 23, 1951, as a seaman on the "SS Argentina," a vessel of Panamanian registry. At said time he was admitted under Section 3 (5) of the Act of May 26, 1924 (8 USCA 203 (5) ). On November 21, 1952, the District Director, Immigration and Naturalization Service, issued a warrant for petitioner's arrest, alleging therein that he was, at the time of his entry, an immigrant not in possession of a valid immigration visa as required under the provisions of the Act of May 26, 1924, and not exempt therefrom and that he was therefore subject to deportation pursuant to law. Said warrant of arrest was served on petitioner at Seattle on November 21, 1952, the date of issuance.

#### II.

That a deportation hearing was accorded the petitioner on December 12, 1952, at Seattle, at which time he was represented by counsel. At said hearing the testimony of petitioner was taken in the Slavic language through his interpreter. During the course of said hearing the petitioner admitted

that he is an alien, that he had last entered the United States on October 23, 1951, as a member of the crew of the "SS Argentina," that he had deserted the ship at the Port of New York, that at the time of said entry into the United States he had intended to remain in the country permanently, and that at the time of said entry he was not in possession of a valid immigration visa for the purpose of entering the United States for permanent residence. Petitioner specified in said hearing that in the event he should be found subject to deportation and ordered deported that he be deported to Canada. He also requested the privilege of voluntary departure should he be found ineligible to remain in the United States.

### III.

On December 16, 1952, the hearing officer ordered that the petitioner be deported under Sections 13 and 14 of the Act of May 26, 1924 (8 USCA 213, 214), pursuant to law on the charge stated in the warrant of arrest. Petitioner appealed from the decision of the hearing officer to the Board of Immigration Appeals, and on May 4, 1952, the Board ordered the said appeal dismissed upon consideration of the entire record. On May 26, 1953, the District Director issued a warrant for the deportation of the petitioner.

### IV.

On June 10, 1953, Senator Jackson introduced a private bill in petitioner's behalf in the Senate of the United States providing for relief from depor-

tation. Petitioner received a stay of deportation during the pendency of said legislation. The Bill did not receive favorable action in the Senate Judiciary Committee and was not reported out of said committee or become enacted into law.

## V.

That on November 25, 1954, petitioner was flown to New York by the Immigration and Naturalization Service for deportation to Italy pursuant to the warrant of deportation issued May 26, 1953, by the respondent herein. While in New York awaiting deportation, petitioner filed a petition for writ of habeas corpus, which petition was subsequently abandoned; on January 4, 1955, petitioner filed an application for relief from deportation under Section 6 of the Refugee Relief Act of 1953; said application set forth petitioner's assertion of Yugoslav nationality and his fear of persecution by reason of racial, religious and political convictions.

## VI.

That a hearing on petitioner's application for relief under the Refugee Relief Act of 1953 was accorded petitioner in New York on January 4, 1955, at which time petitioner was represented by counsel. On January 5, 1955, the special inquiry officer recommended that said application be denied for the reason that petitioner's last entry into the United States was unlawful. Said recommendation was approved upon consideration of the entire rec-



ord by the Acting Regional Commissioner of the Immigration and Naturalization Service on February 17, 1955.

## VII.

That on January 7, 1955, petitioner filed a motion before the Board of Immigration Appeals requesting reopening of the deportation proceedings and reconsideration of the order entered by the hearing officer on December 16, 1952. Said motion was denied on June 8, 1955. Records of the Immigration and Naturalization Service, admitted into evidence as Respondent's Exhibit A-1, indicate that during the interim, respondent directed an inquiry through government channels to Canadian authorities as to whether Canadian officials would issue travel documents to petitioner to effectuate his deportation to Canada, and that on May 4, 1955, the Chief of the Admissions Division, Department of Citizenship and Immigration, Canada, directed a letter communication to United States officials stating in effect that petitioner was not admissible to Canada as a deportee from the United States.

## VIII.

That thereafter a private bill was introduced in the Senate of the United States in behalf of the petitioner which provided for relief from deportation. Said Bill (S. 551) was passed by the Senate on January 16, 1956, but was not thereafter enacted into law. During the pendency of said proposed legislation, petitioner was granted a stay in depor-

tation, and upon failure of the bill's enactment into law, petitioner was granted a further stay in deportation until November 1, 1956, to permit him to attempt to emigrate to Canada. Petitioner failed to depart from the United States by said date, and on November 2, 1956, he was ordered to report to the District Office of the Immigration and Naturalization Service at Seattle on November 21, 1956, for deportation to Italy pursuant to the warrant of deportation issued May 26, 1953.

From the foregoing Findings of Fact the Court makes the following:

### Conclusions of Law

#### I.

That the subject deportation proceedings were not arbitrary, unfair or unreasonable, and petitioner has been accorded a full and fair hearing upon the issue of his deportability.

#### II.

That the petitioner has been accorded a full and fair hearing upon his application for relief from deportation under the provisions of Section 6 of the Refugee Relief Act of 1953, and the denial of such application was not arbitrary, unfair, or an abuse of discretion.

#### III.

That the warrant of deportation under date of May 26, 1953, is valid and subsisting, and the order

of deportation herein is supported by the record as a whole.

IV.

That respondent is entitled to an order dismissing the petition and discharging the order to show cause.

Done in Open Court this 11th day of March, 1957.

/s/ WILLIAM J. LINDBERG,  
United States District Judge.

Approved as to form and entry:

/s/ RICHARD JENSEN,  
Of Attorneys for Petitioner.

Presented and approved by:

/s/ RICHARD F. BROZ,  
Assistant United States  
Attorney.

[Endorsed]: Filed March 11, 1957.



United States District Court, Western District of  
Washington, Northern Division

No. 4270

In the Matter of:

The Application of ANTHONY SCRIVANICH

vs.

UNITED STATES IMMIGRATION AND NAT-  
URALIZATION SERVICE and JOHN P.  
BOYD, District Director.

### ORDER

This Matter having been heard by the Court on February 12, 1957, the petitioner being represented by counsel, Anthony M. Ursich and Richard Jensen, and the respondent being represented by Richard F. Broz, Assistant United States Attorney, the record of administrative proceedings and oral argument having been considered, and the Court having heretofore entered its oral opinion and stated its Findings of Fact and Conclusions of Law, now, therefore,

It Is Ordered, Adjudged and Decreed that the petition in this cause be and the same is hereby denied, and the order to show cause heretofore issued is discharged.

Done in Open Court this 11th day of March, 1957.

/s/ WILLIAM J. LINDBERG,  
United States District Judge.

Approved as to form and entry:

/s/ RICHARD JENSEN,  
Of Attorneys for Petitioner.

Presented and approved by:

/s/ RICHARD F. BROZ,  
Assistant United States  
Attorney.

[Endorsed]: Filed and entered March 11, 1957.

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[Title of District Court and Cause.]

### NOTICE OF APPEAL

To: The Clerk of the above-entitled court, United States Immigration and Naturalization Service, John P. Boyd, District Director, and to Charles P. Moriarty and Richard F. Broz, Attorneys for the Respondents.

You and Each of You are hereby notified that the petitioner above named, Anthony Scrivanich, feeling aggrieved at the order of the court entered on or about the 11th day of March, 1957, wherein the above-entitled court ordered, adjudged and decreed that the petition in this cause be denied and that the Order to Show Cause heretofore issued is discharged, is appealing therefrom to the United States Circuit Court of Appeals for the Ninth Circuit and does hereby appeal from each and every part of said order, judgment and decree of the Dis-

trict Court and from all rulings and orders adverse to this petitioner which occurred during the trial of said cause and prior and subsequent thereto.

Dated this 11th day of March, 1957.

/s/ RICHARD JENSEN,  
Attorney for Petitioner.

[Endorsed]: Filed March 11, 1957.

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RESPONDENT'S EXHIBIT A-1

United States of America  
Department of Justice  
Immigration and Naturalization Service  
Seattle, Washington

January 16, 1957.

Certification

By Virtue of the authority vested in me by Title 8, Code of Federal Regulations, Section 2.1, a regulation issued by the Attorney General pursuant to Section 103 of the Immigration and Nationality Act,

I Hereby Certify that the annexed documents are originals, or copies thereof, from the records of the said Immigration and Naturalization Service, Department of Justice, relating to Anthony A. Scrivanich, File No. A8 897 365, of which the Attorney

General is the legal custodian by virtue of Section 103 of the Immigration and Nationality Act.

In Witness Whereof I have hereunto set my hand and caused the seal of the Department of Justice, Immigration and Naturalization Service, to be affixed, on the day and year first above written.

[Seal]      /s/ JOHN P. BOYD,  
District Director, Immigration and Naturalization  
Service.

The Foreign Service of the  
United States of America  
Ottawa, Ontario

5000/9.

May 3, 1955.

P. T. Baldwin, Chief,  
Admissions Division,  
Dept. of Citizenship & Immigration,  
Immigration Branch,  
Ottawa, Ontario.

Attention: Mr. F. A. Smith.

Dear Sir:

Reference is made to the conversation had recently between an official of your Department and the writer concerning the case of the person named below, who is under deportation proceedings in the United States and has specified Canada as the country to which he desires to be deported. The facts in the case are as follows:

Name: Anthony Agustino Scrivanich.

Age: Born August 3, 1929.

Place of birth: Sansego, Istria, Yugoslavia  
(formerly Italy).

Present nationality: Italy.

Occupation: Seaman.

Residence in the U. S.: Since Oct., 1951.

Grounds for deportation: Documentary.

Prior residence in Canada: None.

Relatives/friends in Canada: None.

It will be very much appreciated if you will confirm the oral decision made in this case by signing in the appropriate space below and return this letter as soon as possible.

Very truly yours,

/s/ ARTHUR H. MacGREGOR,  
Attache.

Arthur H. MacGregor, Attache,  
U. S. Embassy, Ottawa, Ontario.

Date: May 4, 1955.

The case of Anthony Agustino Scrivanich has been considered and it has been determined that he is not admissible as a deportee from the United States.

/s/ P. T. BALDWIN,  
Chief, Admissions Division.

A8 897 365.

April 28, 1955.

A. H. MacGregor, Liaison Officer,  
United States Embassy, Ottawa, Ontario, Canada.  
Walter R. Stolz, Acting Chief, Detention, Deportation and Parole Section, Seattle, Washington.  
Anthony Agustino Scrivanich.

Transmitted please find Form I-217 in the case of the subject alien. You will note that although the subject has never resided in Canada and has no family or friends there, he has requested deportation to Canada.

Please present this case to the Canadian authorities with a view to obtaining a travel document for his deportation to Canada.

Attachment:

WRS:mbl

2 6/1/55

File

mbl

Admitted February 12, 1957.



[Title of District Court and Cause.]

CERTIFICATE OF CLERK, U. S. DISTRICT  
COURT, TO RECORD ON APPEAL

United States of America,  
Western District of Washington—ss.

I, Millard P. Thomas, Clerk of the United States District Court for the Western District of Washington, do hereby certify that pursuant to the provisions of Subdivision 1 of Rule 10 of the United States Court of Appeals for the Ninth Circuit and Rule 75(o), FRCP, I am transmitting herewith the following original documents in the file dealing with the cause as the record on appeal herein to the United States Court of Appeals for the Ninth Circuit at San Francisco, said papers being identified as follows:

1. Petition for Writ of Habeas Corpus, filed Nov. 21, 1956.
2. Order to Show Cause, filed Nov. 21, 1956.
3. Return to Petition for Writ of Habeas Corpus, filed Nov. 30, 1956, with Exhibits "A" and "B" attached (which exhibits were marked as trial Exhibits A-2 and A-3, respectively).
4. Brief of Petition in Support of Petition for Writ of Habeas Corpus, filed Dec. 17, 1956.
5. Respondent's Brief, filed Dec. 27, 1956.
6. Respondent's Suppl. Memo, filed Jan. 17, 1957.

In the United States Court of Appeals  
for the Ninth Circuit

No. 15521

ANTHONY SCRIVANICH,

Appellant,

vs.

UNITED STATES IMMIGRATION AND NAT-  
URALIZATION SERVICE and JOHN P.  
BOYD, District Director,

Appellee.

STATEMENT OF POINTS AND  
DESIGNATION OF RECORD

Comes now the appellant, through his attorneys of record, and respectfully submits the following statement of points and designation of record upon which he will rely in his appeal in the above-entitled cause.

Statement of Points

I.

The denial of petitioner's motion of January 7, 1955, requesting reopening of the deportation proceedings was arbitrary, unreasonable and unfair.

II.

The petitioner was unlawfully deprived of his right to qualify as a refugee under the Refugee Relief Act of 1953, by virtue of the erroneous finding that he entered into the United States unlawfully.



III.

The order of deportation to Italy is unlawful.

IV.

Exhibit A-1 was admitted into evidence erroneously over objection.

Respectfully submitted,

/s/ ANTHONY M. URSICH,

/s/ RICHARD J. JENSEN,  
Attorneys for Appellant.

Service of copy acknowledged.

[Endorsed]: Filed April 29, 1957.

THE  
JOURNAL OF THE  
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